

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|------------------------------|---|----------------------------|
| MARK CARBAUGH, | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. H-10-0670 |
| | § | |
| UNISOFT INTERNATIONAL, INC., | § | |
| | § | |
| Defendant. | § | |

ORDER

Pending before the court is Plaintiff, Mark Carbaugh's, Motion to Strike Defenses (Docket Entry No. 7), to which defendant, Unisoft International, Inc., has filed a Response (Docket Entry No. 8). Plaintiff argues that defendant has not alleged its affirmative defenses in ¶¶ 35, 37, 38, 39, 40, 42, and 45 with sufficient specificity or factual particularity to give plaintiff fair notice of the defenses being advanced. In its response defendant agrees to withdraw the affirmative defenses alleged in ¶¶ 39, 40, 42, and 45, but argues that it has pleaded the affirmative defenses alleged in ¶¶ 35, 37, and 38 with sufficient factual particularity.

Having reviewed defendant's affirmative defenses and the parties' arguments the court is persuaded that the affirmative defenses pleaded by defendant in ¶¶ 35, 37, and 38 are not alleged with sufficient factual particularity to provide fair notice to the

plaintiff of the basis for those affirmative defenses. Instead of striking these affirmative defenses, however, the court will afford defendant the opportunity to file amended affirmative defenses that provide adequate notice of their factual basis. Plaintiff's Motion to Strike Defenses (Docket Entry No. 7) is therefore **DENIED**, and defendant is **ORDERED** to file an amended answer and affirmative defenses within fourteen days of the entry of this Order. If defendant does not have sufficient information to allege one or more of these defenses with sufficient factual particularity, it may omit them from its amended pleading and seek leave to file an additional amendment after the parties have conducted discovery.

SIGNED at Houston, Texas, on this the 19th day of May, 2010.



SIM LAKE
UNITED STATES DISTRICT JUDGE